

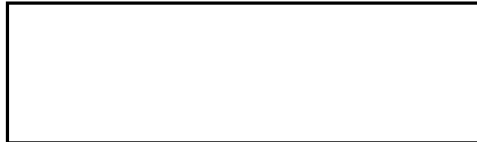
OGC Has Reviewed

10 September 1975 P

MEMORANDUM FOR: General Counsel

SUBJECT: Participation of the Office of General Counsel  
in the Regulatory Process

In accordance with our recent discussion, attached is my study of the participation of the Office in the Agency's regulatory process. As you know, my study of this subject led to my examination, to a limited extent, of the entire regulatory process. Thus, you will find my findings, conclusions and recommendations relate both to the Office participation in the process as well as to the process itself.



Assistant General Counsel

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Attachment

PARTICIPATION OF THE OFFICE OF GENERAL COUNSEL  
IN THE REGULATORY PROCESS

PARTICIPATION OF THE OFFICE OF GENERAL COUNSEL IN THE  
REGULATORY PROCESS

INTRODUCTION

Documented herein is a study by the Office of General Counsel (OGC) of its current and proposed participation in the regulatory process of the Central Intelligence Agency. Agency regulations, as discussed in some detail below, have the force and effect of law. Accordingly, the participation of the legal office of the Agency in the formulation of such regulations is critical if not mandatory. While possibly trivial to some, the promulgation of Agency regulations must rank as one of the most important non-operational tasks of the Agency. While the study originally focused on the OGC participation in the regulatory process, it soon became evident that the scope of the study had to focus on certain shortcomings of the total regulatory process. Accordingly, certain recommendations are included herein which are not directly related to the OGC participation in the process.

LEGAL FORCE AND EFFECT OF AGENCY REGULATIONS

The regulations of an agency of the Government are the general rules relating to the subject on which the agency acts made by the head of the agency under the authority of some act of Congress conferring power to make such regulations and thereby giving to them the force and effect of law. 91 C.J.S. United States § 31. A legislative rule is valid and is binding upon a court as a statute if it is (a) within the granted power, (b) issued pursuant to proper procedure, and (c) reasonable. Procedural rules designed to govern the agency's own proceedings are usually considered to be legislative rules, whether or not specific power is granted to issue such rules. 1 Davis, Administrative Law Treatise, 299 (1958). The Supreme Court has even asserted flatly that an agency's interpretation of its own procedural rule "is binding upon the courts." FCC v. Pottsville Broadcasting Co., 309 U.S. 134 (1940). The Court has also held that procedural rules are binding upon the administrators who issue them. Service v. Dulles, 354 U.S. 363 (1957) and United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954).

Although the head of an executive department (and we believe an independent agency) is limited in his acts by statutory pronouncements, he need not show express statutory authority for an administrative detail incident to a power conferred. 77 Am Jur 2d, United States, § 51. He must, of necessity, be entitled to exercise his discretion in the distribution of his duties and responsibilities. United States v. MacDaniel, 32 U.S. 1 (1833). One way, of course, to accomplish this is to delegate authority to others. Agency regulations circumscribe and implement such delegation. Such regulations cannot be questioned or defined because they may be thought unwise or mistaken. United States v. Eliason, 41 U.S. 291 (1842). And, as long as they are not in conflict with an express statutory provision, Maryland Casualty Co. v. United States, 251 U.S. 342 (1920), they are regarded as having the force of law. Accardi, supra; Billings v. Truesdale, 321 U.S. 542 (1944); Standard Oil Co. v. Johnson, 316 U.S. 481 (1942); Rosen v. United States, 245 U.S. 467 (1918); Boske v. Comingore, 177 U.S. 459 (1900); United States v. Eaton, 144 U.S. 677 (1892); Ex parte Reed, 100 U.S. 13; Gratiot v. United States, 45 U.S. 80 (1846); United States v. Freeman, 44 U.S. 556 (1845); and, Aldridge v. Williams, 44 U.S. 9 (1845).

An agency's disregard for its own regulations is treated at some length in an article entitled Violations by Agencies of Their Own Regulations, 87 Harv. L. Rev. 629 (1974). Therein, it is noted that courts have permitted agencies to depart from their own regulations; however, such departures are "never permissible if the action would then exceed the agency's statutory authority." Id. at p. 629. Of most applicability to Agency regulations is the commentary therein at pages 637 - 638:

Some agency violations of regulations may result in more favorable, rather than less favorable, treatment to the excepted party. For example, agencies have sometimes failed to enforce regulations requiring that a person seeking a government benefit comply with certain application procedures or meet specified substantive qualifications. Since such violations, or 'waivers,' allow a person a benefit to which he would not otherwise be entitled, they may be unfair to those similarly situated who are denied waivers.

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Moreover, an agency's practice of waiving its regulations, without explanation, may breed resentment among those who are denied waivers, particularly as the number of persons who are granted them increases.

In referring to agencies' selective enforcement of statutes, Kenneth Davis, a leading, if not the leading, authority on administrative law practice, has stated that:

The discretionary power to be lenient is an impossibility without a concomitant discretionary power not to be lenient, and injustice from the discretionary power not to be lenient is especially frequent; the power to be lenient is the power to discriminate. Discretionary Justice 170 (1969) (emphasis in original).

THE AGENCY REGULATORY SYSTEM

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Headquarters Regulation [ ] specifies that the Agency Regulatory System consists of regulations, notices and handbooks. The purpose of these issuances is to prescribe policies and procedures essential to the control and direction of Agency activities. The regulation states:

Agency regulatory issuances are published only upon approval by the Director of Central Intelligence, or by the Deputy Director for Administration for headquarters issuances and the Deputy Director for Operations for field issuances. This authentication does not appear on the printed issuance but is made a part of the official background records maintained by the Deputy Director for Administration.

The regulation provides for [ ] regulations, notices and handbooks, as well as intraoffice issuances. The Regulations Control Staff indicates that there currently exists over 52 types of issuances that are subject to various aspects of the regulatory process. The regulations "are the basic medium for prescribing directives of a continuing nature." They prescribe policy, establish organization, delegate authority, and assign responsibilities. The notices are used to disseminate transitory information. They are not to be used as the basic medium to convey permanent directives. The handbooks supplement the regulations by providing the detailed procedures necessary to effect Agency policies. Intraoffice issuances are instructions written exclusively for the guidance and direction of personnel and activities under the direct supervision of the issuing official. These issuances are limited to instructions required for the effective operation of the issuing office. They are to neither establish Agency policy nor prescribe procedures for Agency-wide application. And they are to be consistent with applicable regulatory issuances.

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THE OFFICE OF GENERAL COUNSEL IN THE CURRENT  
REGULATORY PROCESS

STAT Headquarters Regulation [ ] states that the "General Counsel is responsible for all legal matters arising in connection with the official business of the Agency." In connection therewith, the regulation states that the General Counsel shall "review all regulatory material of the Agency for legality prior to publication." In practice, however, the Office of General Counsel does not "review all regulatory material." As a general practice, OGC reviews all regulations and notices but does not generally review the multitude of other regulatory issuances. Admittedly, the applicability of much of this latter material is limited both in time and in substance and applies to less than the entire Agency; however, several categories of this type of material clearly reflect Agency policy and legal positions. A good example of this is directorate regulations and notices. Until recently, OGC did not even have copies of such --sometimes called directorate instructions, i.e., Directorate of Operations Instructions (DOIs). Currently, OGC receives, after approval, a copy of the DOIs and the Directorate of Operations Notices (DONs). OGC does not receive the regulatory issuances of the other directorates. Further, as in the case of the Operations Directorate, OGC does not participate in the review process prior to approval of any of this type of regulatory material.

STAT In addition to the above, [ ] assigns the General Counsel the responsibility for (1) being the Director's advisor on legal matters, (2) being the legal advisor for all Agency officials and employees for matters in connection with the official business of the Agency, (3) all general liaison outside the Agency relating to legal matters, (4) maintaining a panel of cleared private attorneys for use in connection with Agency activities, and (5) selection and use of private attorneys with respect to Agency matters for whatever purpose. Various other regulations set forth other responsibilities. In summary, the more prominent are as follows:

STAT (a) [ ] relates to the role of the General Counsel in the Agency's use of private attorneys in clandestine operations. There seems to be a conflict between this regulation and the same type provision in [ ]. In [ ] the attorneys are those "resident within the continental United States; " [ ] (2)(e) makes no such restriction. It is unclear then as to the General Counsel's role in the use, in clandestine operations, of foreign attorneys.

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(b) [ ] permits Agency employees to enter into or continue apparent conflict of interest in certain special situations. Before such an exception is approved, the approving official is to seek the opinion of the General Counsel. Also, the General Counsel reviews certain employees' employment and financial interest statements for conflicts of interest. [ ]

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(c) [ ] specifies that the "opinion of the General Counsel will be final on the legal aspects of any question referred to him by an authorized certifying officer relating to the legality of any expenditure or claim which depends on the interpretation of applicable law or Agency regulations." There seems to be no distinction between confidential or nonconfidential funds in the context of this responsibility.

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(d) [ ] assigns the responsibility of liaison with the Office of Munitions Control, Department of State, to the General Counsel.

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(e) [ ] states that certain Support Supplements (Administrative and Liquidation Plans) for Agency projects (specific operational activities) require the concurrence of the General Counsel. [ ] states that it is essential that the Office of General Counsel, together with other specified offices, participate in the development of such plans.

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(f) [ ] requires the Director of Logistics to obtain "legal approval from the General Counsel on the legal aspects of real estate and construction transactions."

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(g) [ ] assigns the General Counsel the responsibility of custodian of the press by which the official Agency seal is affixed to documents for evidentiary purposes.

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(h) [ ] relates to the role of the General Counsel in the service of subpoenas on Agency personnel in their official capacities.

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(i) [ ] requires the concurrence of the General Counsel for all claims for reimbursement of foreign taxes other than income and related taxes.



(j) Members of the Office of General Counsel sit as members or advisors to various Agency boards and panels, i.e., Board of Review for Shortages and Losses; Contract Review Board; Claims Review Board; Board of Survey; Covert Tax Board; Overseas Benefits and Allowances Committee, etc., many of which are established pursuant to regulatory authority (although several have no regulatory authority).

STAT (k)  requires the General Counsel to advise on Agency assistance to U.S. Federal, state and local government components.

DELEGATION OF AUTHORITY

Agency regulations serve as a record, and in some cases possibly the only record, of certain delegations of authority. The Director has delegated certain authorities to his immediate subordinates. Several--ideally all--of these delegations are contained in [ ] (the Deputy Director; the CIA Historical Staff; Deputy to the Director of Central Intelligence, Intelligence Community and CIA SIGINT Officer); [ ] (the Inspector General, General Counsel, Legislative Counsel and Comptroller (pending)) and [ ] which incorporates by reference the delegations of [ ] (DDS&T), [ ] (DDO), [ ] (DDA). The subdivisions of each of these regulations delegate certain authorities and responsibilities to the various offices within the respective directorates. Several other regulations specify detailed procedures within the delegated authority of a particular office, i.e., [ ] deals with security; [ ] deals with personnel; [ ] deals with medical; [ ] deals with training; etc.

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PREVIOUS STUDIES OF THE AGENCY'S REGULATORY PROCESS

The Inspector General has made several studies (February 1956, July 1956, October 1965 and November 1972) of the Agency's regulatory process. Several of these studies were made in connection with a survey of the administrative component administering the regulatory system. The portion of the most recent survey entitled Inspector General Survey: Support Services Staff/DOS, November 1972, dealing with the Regulations Control Staff, is appended at Tab A. The details contained therein will not be repeated in detail here; however, the major finding bears consideration in that it seems to be long standing, has been historically recognized as requiring rectification (both prior and subsequent to the 1972 survey), and, to date, seems to be without solution. In its simplest form, the problem with the current system is that it, as presently constituted, can offer no hope of functioning in a timely manner. As pointed out in the material in Tab A, many solutions have been proposed and adopted to cure this defect. However, none to date seem to solve the problem. For these reasons, the General Counsel makes the findings, conclusions and recommendations contained in the section that follows.

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

Based on the extensive research done by the Inspector General, the requirements of administrative law and the experience of the General Counsel, it is the opinion of the General Counsel that:

1. The Director of Central Intelligence should rely on the General Counsel to review all Agency regulatory materials for their legality in whatever form.
2. The General Counsel may delegate the review of all Agency regulatory material to others within his Office.
3. The forms of the Agency regulatory materials should be reconstituted as follows:

(a) All regulatory materials should cite the authority from which they are derived, i.e., a regulation (primary Agency regulatory authority) should cite the statutory, Executive order or Constitutional authorities that form the basis for such regulation. A handbook which implements a regulation could merely cite the regulation which it implements if that regulation properly delegates the authority for such. In all cases, the name of the approving officer, as well as the date of approval, should be contained in the regulation.

(b) Agency regulatory materials should be constructed such

[Redacted]

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[Redacted] A directive solely applicable to one directorate may be contained in a regulation, instruction or notice of that directorate.

4. The approval of Agency regulatory materials should be reconstituted as follows:

(a) The Director must approve all Agency regulatory materials in which he delegates his authority. Normally, he will delegate such only to his immediate subordinates--the Deputy Directors and Heads of Independent Offices. However, on occasion, he may delegate authority directly to another Agency officer or employee.

(b) The Agency officer or employee to whom the Director has delegated authority, may redelegate that authority when expressly provided for in the Director's original delegation.

(c) Authorities delegated in Paragraph (b) above may be redelegated to the appropriate and necessary organizational level when expressly provided for in the delegation of Paragraph (b). Each redelegation must contain authority therefor. In other words, each official or employee exercising the authority must be able to trace his authority through a positive chain of delegations to the Director.

(d) The Agency officer or employee within whose delegated authority a regulation (or regulatory material) falls, should have the authority to approve such a regulation (or regulatory material) within the following guidelines:

(1) The Regulations Control Staff should have the final authority as to form, style and editorial matters.

(2) The regulatory material can be approved only after the General Counsel finds no legal objection thereto.

(3) Any component that is in disagreement with the approving officer or employee must convince the authority from which the approving officer or employee derives his authority that the regulatory material should not be approved. Otherwise, that approving officer or employee can resolve the disagreement in his own favor.

(4) Any disagreements as to who is the authorized approving officer will be determined by the General Counsel. The General Counsel's determination in such a matter is subject to review only by the Director.

The Regulations Control Branch

18. In accordance with [ ] the Deputy Director for Support is responsible for the administration of the Agency regulatory system. The DDS assures adequate coordination, distribution and proper authentication of regulatory issuances, and maintains the official records of these actions. The Regulations Control Branch (RCB) is the DDS mechanism for the administration of the Agency regulatory system. This branch functions as the central control point for all Agency-wide regulatory issuances — regulations, notices and handbooks [ ]

It also functions as the control point for employee bulletins, and memoranda for employees from the DCI. The branch is responsible for establishing publication standards, for making recommendations when there is a need for the expression or revision of Agency policy, for maintaining official records of the coordination and authentication of regulatory issuances, for advising and assisting Agency components in planning and organizing regulatory materials, and for expediting and assisting in the general development and formal coordination of proposed issuances. The branch consists of four publications editors and two clerk typists. The Chief, RCB currently acts also as Deputy Chief, SSS. One member of the branch, although designated as a publications

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editor, is occupied almost full time with preparing, maintaining and issuing the index for the regulations.

19. The number of regulations in process remains constant at about 85. The branch receives approximately 27 proposed new regulations or changes per month and turns out about the same number. Most of these proposals originate within a Support Directorate component.

20. The coordination process has not changed noticeably over the years. When draft regulations are received in the Regulations Control Branch, they are edited or rewritten as required to put them into appropriate regulation language. Then copies are routinely sent to the "Big Six," i.e., DDP, DDI, DDS&T, IG, OGC and OPPB. Other elements are included as appropriate. The draft regulations are sent to a central point in each directorate and it is the directorate's responsibility to coordinate within itself. Each copy is sent out with a deadline for comments indicated on the routing sheet. Everyone except the DDP normally meets the deadline.

21. Timely coordination of proposed regulatory issuances has long been a problem in the Agency. It was highlighted by the first IG survey of CIA Regulations in February 1956. This survey concluded that

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"The process of coordinating regulations should involve active and prompt consideration by responsible officials in each interested component."

The IG recommended that

". . . when coordination of a regulation has bogged down because of excessive delay of a component, the Regulations Control Staff [predecessor of the Regulations Control Branch] should refer the proposed regulation to the DCI, through the initiating Deputy Director, for decision."

The DDS agreed with the conclusion and noted that

"The Regulations Control Staff maintains an elaborate suspense and follow-up system in an attempt to ensure prompt consideration of issuances outside the staff for coordination or other work required. The system has not gotten the desired response. RCS is stepping up its attack."

The acting DCI felt this response was unsatisfactory and wrote that

"I am particularly concerned about the amount of time required to issue needed regulatory material, particularly with regard to the time spent in its coordination. I fully appreciate the value of coordination, but this should not and must not delay unduly the issue of these publications."

He then tasked the DDS, in collaboration with the DDP and the DDI, to review this as a specific problem and institute proper corrective measures as soon as practicable. The DDS responded by putting into effect "a new procedural system for the preparation, review, and coordination of regulations." Subsequently, on



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25 March 1957 the DDS reported to the DDCI that "the large backlog of proposed Regulations for which Deputy Director (Plans) coordination was long overdue has been eliminated." Despite the strong position taken by the DDCI on this problem at that time, nothing of a permanent nature was accomplished.

22. The Inspector General was again asked to review the Agency regulatory issuances in April 1965. In his memorandum requesting the survey Colonel White stated,

"The Agency regulatory process has also been a vexing and time-consuming process which, in my judgment, continues to leave a great deal to be desired . . . . There are a number of questions involved: Is our coordination system right? Is there a duplication between Agency regulatory issuances and other intra-Agency issuances, employee bulletins, financial instructions, etc.?"

Once again the IG concluded that

"The most glaring shortcoming in the current operation of the Agency regulatory issuances system is the long delay in the coordination phase."

It was felt that probably the most significant reason for the delay

"is the continuing DDP concern that the regulatory process serves to erode the area of DDP responsibility and to restrict the flexibility which the Clandestine Services need for the effective pursuit of the assigned mission. As a result the coordination becomes a painstaking examination for the 'real intent' and 'the meaning between the lines.' While admittedly generally useful suggestions

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also accrue, on balance the price for this scrutiny is considerable and probably too high since it makes timely changes or introduction of new regulations discouragingly tedious. In short, regulatory issuances are used as a point of reference for resolving doctrinal differences of view regarding centralized administration in CIA versus a loose federation of almost autonomous directorates."

In an effort to achieve a general speed-up in the working of the system, a number of changes in the mechanics of coordinating regulatory issuances were recommended, the most noteworthy being to establish a senior level Committee on Regulations to review proposed regulations that involved innovations of policy or that were the subject of disagreement between the originating office and other offices, and to fix and enforce a specific deadline for the coordination of each proposed regulation, not to exceed 30 days. In response, the DDS did establish a Committee on Regulations and stated that "realistic deadlines for completion of the coordination process will be established." Significantly, the committee has met only once or twice and these meetings occurred shortly after the committee was formed. These meetings were described as having had a salutary effect on the coordination process, i.e., the number of proposed regulations awaiting coordination was reduced considerably, but after this initial achievement the committee was never reconvened. Also, the DDS

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again chose to regard deadlines as not enforceable so that once the initial wave of coordination was effected, the Plans Directorate reverted to its practice of almost never meeting the deadlines.

23. In the IG survey of Operational Services in November 1970, it was concluded that

"the Publications Control Group [which is responsible for effecting coordination of regulations within the CS] has been widely regarded as a major bottleneck for some years. Indeed, it still lags badly in timely coordination as seen by the Regulations Control Staff (DDS/RCS). For example, when we checked with RCS, some 39 regulatory issuances were overdue from PC [Publications Control Group]; 12 issuances requiring authentication were over one year old. Obviously the fundamental problem of coordination in the CS is not one that can be traced to the Publications Control Group alone; it is a wider one involving the CS as a whole."

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24.. "A considerable amount of the delay in coordination,"  
the report continued,

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32. Still another consequence of this situation is a substantial amount of extra work on the part of those concerned with getting regulations out. Regulations Control Branch personnel spend a tremendous amount of their time, and take up the time of a multitude of others, in what they regard as needless negotiation -- or, more properly, mediation -- on small points in a draft regulation.

33. Finally, one must ask what is gained by the long and tortuous process now employed in promulgating regulations. Do

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our regulations have a greater permanence than they otherwise would have? Do they have greater clarity and eliminate questions of interpretation? Do they make unnecessary the issuance of clarifications or amendments? So far as we can see, none of these results is achieved by the extra care and time we spend on the coordinating process. Regulations are frequently revised, as is evident to anyone who looks through a volume. These changes are as often as not made necessary by changes in Agency policy, legislation or government-wide policy. The average life of a Headquarters regulation has been estimated at four years. As for clarity, the number of amendments that are issued attest to the fact that it is impossible to anticipate in advance all questions that may arise about a given regulation. Indeed, the relatively short life of regulations and the need for frequent changes are the strongest arguments against trying to issue perfect regulations, since a perfect regulation of today may be an obsolete regulation of tomorrow.

34. How then to cope with the problem? What is the best solution if there is, indeed, a solution? The fact that the problem has persisted for at least 16 years without any permanent corrective measures being taken is not encouraging.

35. One possible solution is to give the DDS the authority to authenticate regulatory issuances without final DDP coordination

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after a reasonable time period has elapsed. This is the system presumably now being used internally within the DDP, i.e., concurrence is assumed if no comment is received by a specified time. Furthermore, when comments are received from the DDP, these comments should not be subject to repeated change, additions or deletions except in unusual circumstances. Very clearly, this option is not satisfactory, since, notwithstanding the problems associated with DDP coordination, the CS's comments are important because it is more affected by the regulations than any other directorate. Also, the CS comments nearly always make a positive contribution to the proposal being considered. Other alternatives must therefore be considered.

36. SSS plans to introduce two more innovations in hopes of improving the coordination process. It plans to scrutinize draft proposals more carefully to determine the urgency -- or lack of urgency -- of getting the issuance out, so that more meaningful deadlines can be set. It also plans to consult with the directorates in an effort to get advance agreement on the deadline for a given proposal. These are welcome initiatives, and they may do some good. The inescapable fact is, however, that the root of this problem lies within the Clandestine Service. The many recommendations that have been made for dealing with the problem have come to naught because the CS has not yet found a way to handle expeditiously its internal coordination of regulatory

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issuances. Until this is done, there is little hope for much improvement in this area. We believe it is time for the DDP to come to grips with this problem and to take the measures that are necessary to remove what has become by its long duration a rather unsightly spot on the CS's escutcheon.

Recommendation No. 3

That the Deputy Director for Plans investigate the causes of the excessive delays in coordination of regulatory issuances within his directorate and advise the Deputy Director for Support what steps he plans to take to eliminate these delays.

37. Considering the Agency's decentralized organizational structure, it is not realistic to expect easy agreement on all documents which establish Agency policy. Even under the best of circumstances, instances will arise where an Agency-level arbiter will be required. We believe that a periodic status report should be prepared by the DDS for the Executive Director-Comptroller on proposed issuances which have been outstanding for an excessive period of time (say, more than 90 days).

Recommendation No. 4

That the Deputy Director for Support prepare a periodic report to the Executive Director-Comptroller listing proposed regulatory issuances that have been in coordination for an excessively long time, explaining the causes for the delay and recommending action that should be taken.

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38. One recommendation that resulted from the IG survey of CIA regulatory issuances in October 1965 was that "the Deputy Director for Support require, before accepting a proposed regulation for coordination,

(1) That the originating office comply with

25X1 [redacted], which specifies that the originating office 'shall obtain the comment of other offices having related or interdependent responsibilities and functions or whose activities or personnel are substantially affected thereby, before submitting it . . . .'"

39. The DDS concurred in the recommendation but he issued a directive to Support Directorate components stipulating that "The initiator of any regulatory issuance will submit it directly to my office as soon as it has been drafted to his satisfaction and coordinated with affected Support offices, without attempting to get agreement from other interested independent offices or directorates, except as is necessary in order to develop a meaningful issuance."

40. We believe that the DDS directive -- which, incidentally, is now being followed -- is contrary to the [redacted] because 25X1 it precludes preliminary coordination with other interested independent offices or directorates, whereas [redacted] does not 25X1 exclude preliminary contact with any component deemed necessary.

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41. We would urge that maximum effort be focused on preliminary, informal, face-to-face inter-directorate discussion during the drafting of a proposed issuance so that the version presented for formal coordination represents a joint effort of the parties most directly concerned. We believe that this approach will result in less disagreement, and hence, speedier formal coordination.

Recommendation No. 5

That the Deputy Director for Support  
revise the directive regarding coordination of  
regulatory issuances to agree with

25X1

42. We were told during our briefing by Chief, SSS that he did not plan to replace the editor in the Regulations Control Branch who had recently resigned. Rather, he planned to use this slot to place a fourth man in the Microfilm Program Management Branch. We have reservations about this plan. We were able to confirm in discussions with RCB personnel that this position is not needed in the branch. The editors there said they are not overworked now but were underemployed when the now-vacant position was occupied. We have indicated in our discussion of MPMB our doubts that that branch can effectively use a fourth man now. We believe, therefore, that the question of what to do with the surplus slot in RCB ought to be faced now rather than getting it mixed up with the question of a fourth slot in MPMB.

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In the unlikely event that another person is needed in this branch after the two new people have been fully absorbed, an additional slot can be sought at that time.

Recommendation No. 6

That one position of Editor in Regulations Control Branch be abolished.

43. It has always been the philosophy of the Regulations Control Branch that its role was a passive one in the regulatory issuance process. Through its functions of editing, coordinating, and publishing, it strove to assist in the process, but it did not take any initiative of its own to get a particular regulation written, or amended. That philosophy was obviously sound in the days when the branch was staffed essentially by clerical personnel, but it is not appropriate today when the branch is made up of senior and broadly experienced Support careerists. We believe that the Agency regulatory system would stand to gain from a continuing, systematic review for the purpose of calling obsolete or outdated regulations to the attention of responsible offices for revision or rescission. We also believe that branch personnel would welcome this responsibility. It would help smooth out the slack periods of the workload which we were told is endemic in this branch. We discussed this idea with the Chief, SSS and he agreed that it would be feasible for the branch to exercise more

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initiative in this area than it has in the past. We are, therefore, not making a formal recommendation on this point.

44. Headquarters Regulation [ ] deals with intraoffice issuances. The regulation stipulates that these may be issued by a Headquarters component [ ] provided that:

25X1

25X1

\* \* \* \* \*

(2) The issuance neither establishes Agency policy nor prescribes procedures for Agency-wide application;

(3) The issuance is consistent with applicable regulatory issuances;

\* \* \* \* \*

45. The responsibility for complying with the above provisos is left with each directorate. The Regulations Control Branch receives a copy of [ ] as a courtesy but receives no internal issuances of the other directorates. Although we do not believe that RCB should have the responsibility for reviewing every internal issuance before publication to ensure compliance with [ ] we do believe that, as a minimum, wherever an internal issuance pertains to a topic covered by an HR [ ], this HR [ ] should be specifically referenced as assurance that the originator of the intraoffice

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issuance has reviewed the appropriate regulation. We recognize that there will not be an appropriate regulation to reference in every case; however, we do believe that RCB could, without too much difficulty, validate the absence of an appropriate regulation in those instances after the fact.

Recommendation No. 7

a. That the Deputy Director for Support prepare a revision to [ ] to require that intraoffice issuances from all the directorates make reference to the appropriate higher-level regulatory issuance which applies to the particular subject.

25X1

b. That the Deputy Director for Support request the Deputy Director for Intelligence and the Deputy Director for Science and Technology to forward to the Deputy Director for Support an information copy of any new internal regulations issued by their directorates.